

McNamara Declaration

Exhibit 37

Subject: Re: DMCA Notice to Internet Archive
From: Internet Archive <info-reply@archive.org>
Date: 4/30/15, 9:21 AM
To: "Golinveaux, Jennifer A." <[REDACTED]@winston.com>

2pm sounds good. Please call me at our main line 415.561.6767.

On 4/30/15 8:34 AM, Golinveaux, Jennifer A. wrote:
Let's do 2pm Friday. Is there a number I can reach you?

On Apr 30, 2015, at 8:11 AM, "info-reply@archive.org<mailto:info-reply@archive.org>" <info-reply@archive.org<mailto:info-reply@archive.org>> wrote:

Hi Jennifer,

Yes, I'd be available between 9-11a or 2-5pm on Friday. Would a particular time in there work best for you?

Thank You,

Chris

On 4/29/15 10:26 AM, Golinveaux, Jennifer A. wrote:

Hi Chris,

Thank you for your response. I suggest we schedule a call to discuss this matter. Is there a time tomorrow or Friday that works for you?

Jennifer

Jennifer A. Golinveaux

Partner

Winston & Strawn LLP

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[winston.com<http://www.winston.com>](http://www.winston.com)

[Winston & Strawn LLP]
From: Internet Archive [mailto:info-reply@archive.org]
Sent: Monday, April 27, 2015 7:28 AM
To: Golinveaux, Jennifer A.
Subject: Re: FW: DMCA Notice to Internet Archive

Dear Ms. Golinveaux, Esq.,

It is unfortunate that the prospective publisher has decided against publication. Naturally, we at the Internet Archive have no insight into the basis of that decision, but we appreciate that it comes as a serious disappointment to Mr. and Ms. Keith.

If it could be productive and helpful, the Internet Archive would be pleased to offer its scanning services at no cost to provide high-quality digital copies of any of Mr. Keith's physical texts that your clients would wish to have in electronic format to offer for sale or use otherwise. The output would include raw hi-resolution images, cropped images, pdf, epub, and a plain text file generated by optical character recognition. As you may know, our organization is entrusted to digitize texts for many major libraries, including the Library of Congress. Pages are hand-turned so as to maintain the condition of the physical books. You can see some pictures of our scanning process at <https://www.flickr.com/photos/internetarchive> and an example of the output at <https://archive.org/details/birdbookillustra00reed>. We would be very appreciative to have an opportunity to perhaps play a small role in helping Elmer Keith's works and contributions persevere.

We very respectfully ask that Mr. and Ms. Keith duly consider and appreciate that the Archive undertakes a good faith effort to enable donors, users, and volunteers to contribute appropriate materials to the collections at archive.org<<http://archive.org>>. Occasionally, bulk materials are submitted that our staff and systems do their best to work with. This is all done with a sincere intention to provide the broader public with free access to library materials – completely free from advertisements and things like monitoring users to mine and sell commercial data. The Archive is an honest-to-goodness charity with limited resources that has archived over 400 billion web pages and scanned and archived more than 3 million public domain books, among many other projects. We have done so staffed with a team of very dedicated and idealistic individuals – a very large portion of which could easily take their skills to the commercial sector and earn significantly higher salaries. As I write, I realize that this perhaps risks sounding like self-congratulation, but it's really all just intended to underscore that the Archive's resources are directed to very important work that your request for payment asks us to divert.

Therefore, we offer our scanning services and hope that a chance to partner in this way might present us with a cooperative path towards helping preserve and spread Elmer Keith's impressive legacy.

Sincerely,

Christopher Butler
Office Manager
Internet Archive
300 Funston Avenue
San Francisco, CA 94118
[REDACTED]

www.archive.org<<http://www.archive.org>>
On 4/16/15 11:56 AM, Golinveaux, Jennifer A. wrote:

Confidential Settlement Communication–FRE 408

Dear Mr. Butler,

Thank you for your response. While we are respectful of the work that the Internet Archive does, unfortunately in this case your employee's unauthorized uploading of the copyrighted work has caused significant damage to my clients Mr. and Mrs. Keith. Upon independently discovering that the book "Hell, I Was There!" was made freely available on the Internet, their publisher has now decided not to move forward with the release of a new edition of the book. As you can imagine, this is a significant blow to my clients who are in their eighties and had counted on this line of revenue.

As indicated in my February 18 letter, we ask that you work with us to come to agreement over a reasonable monetary amount for the Archive to compensate the Keiths for this infringement. In light of the nature of the infringement and the damage incurred, we believe that number should be \$150,000, in line with the statutory damages available to the Keiths for the intentional uploading of the book.

I look forward to hearing from you soon.

Sincerely,

Jennifer A. Golinveaux

Jennifer A. Golinveaux

Partner

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[Winston & Strawn LLP]

From: Internet Archive [mailto:info-reply@archive.org]

Sent: Tuesday, February 24, 2015 12:04 PM

To: Golinveaux, Jennifer A.

Subject: Re: FW: DMCA Notice to Internet Archive

Dear Ms. Golinveaux, Esq.,

Thank you again for alerting us to the presence of the item formerly posted at https://archive.org/details/Hell_I_Was_There_Elemer_Keith_Autobiography.

Prior to your email, Internet Archive had no specific awareness of this text or its having been uploaded to archive.org<<http://archive.org>>. The text was included in a special collection wherein books are typically contributed in bulk by users. While an Internet Archive account may be indicated as the uploader of record for some uploads in the collection, the uploading process has been performed in bulk, with items generated in an automated fashion, as part of a good faith effort by archivists to secure collections contributed for preservation, including much at-risk and rare material.

Please also be aware that the download count, as indicated on item's details pages does not distinguish between access by automated bots, including web crawlers, and individuals.

Internet Archive has not made any commercial use or received any monetary compensation whatsoever related to the posting of the item at https://archive.org/details/Hell_I_Was_There_Elemer_Keith_Autobiography.

As you may know, the Internet Archive does not exploit these texts for commercial gain and is a 501.c3 engaged in numerous efforts to preserve and expand access to resources of all sorts for current and future generations. These efforts are undertaken solely with an intention of public benefit. We do not post paid advertisements or charge for access to our collections.

We certainly had no intention to bring about any adverse impact on Mr. and Mrs. Keith, and genuinely appreciate your consideration of the above points.

Sincerely,

Christopher Butler
Office Manager
Internet Archive
300 Funston Avenue
San Francisco, CA 94118

www.archive.org<<http://www.archive.org>>

On 2/19/15 10:40 AM, Golinveaux, Jennifer A. wrote:

Thank you for your email. I look forward to receiving a response to my letter of February 18, 2015.

Jennifer

Jennifer A. Golinveaux

Partner

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[Winston & Strawn LLP]

From: Internet Archive [mailto:info-reply@archive.org]

Sent: Wednesday, February 18, 2015 4:45 PM

To: Garcia, Kelley A.

Subject: Re: DMCA Notice to Internet Archive

Dear Ms. Golineaux, Esq.,

Thank you for alerting us to the presence of this item and advising us of this claim. I am confirming that access to the item at https://archive.org/details/Hell_I_Was_There_Elemer_Keith_Autobiography has been disabled.

Sincerely,

Christopher Butler
Office Manager
Internet Archive
300 Funston Avenue
San Francisco, CA 94118

[REDACTED]
www.archive.org<<http://www.archive.org>>

On 2/18/15 3:18 PM, Garcia, Kelley A. wrote:

Please see attached letter from Ms. Golinveaux, hard copy will follow by U.S. Mail.

Thank you,

Kelley Garcia
Assistant to Jennifer A. Golinveaux

Kelley A. Garcia

Legal Secretary

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[Winston & Strawn LLP]

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